(34)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1943.

No. 974

BASIL GOULANDRIS, NICHOLAS GOULANDRIS and LEONIDAS GOULANDRIS, doing business as Goulandris Bros.,

Petitioners,

—against—

THE AMERICAN TOBACCO COMPANY, R. J. REYNOLDS TOBACCO COMPANY, LIGGETT & MYERS TOBACCO COMPANY, INC., BANK OF GREECE, LEKAS & DRIVAS, INC., POMPEIAN OLIVE OIL CORPORATION, and VICTOR CORY, an individual doing business as Victor Cory Company,

Respondents.

BRIEF ON BEHALF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR A WRIT OF CERTIORARI.

The question upon which the petitioners would have this Court pass is a simple one as disclosed by the opinion of the District Court (R., p. 42), the opinion of the Circuit Court of Appeals (R., p. 64), and by the arguments advanced in the petitioners' petition and brief: May a vessel owner defeat the whole purpose of the 1936 amendment of the limited liability statute (46 U. S. C. A. 185), by secretly filing a document described as a petition for limitation of liability but which by its terms merely gives notice that the petitioners may in the future ask for limitation of liability, and which is not accompanied by any security except for costs, or any surrender

of the vessel and her pending freight or an offer to surrender the value of the vessel and her pending freight?

As the Circuit Court of Appeals pointed out (R., p. 69, note 3), a petition for limitation may be filed not only in the District where suit may have been filed against the vessel owner but also in any District where the vessel herself may be located. Under petitioners' argument, while a cargo owner and a vessel owner are actively litigating their rights in a suit filed by the cargo owner in the Southern District of New York, a petition which the vessel owner may have secretly filed say in the Northern District of California, without any accompanying security, may be lying dormant but, when petitioners' interests make it desirable after the cargo owners have successfully established the vessel owner's liability in the New York suit, the dormant proceedings in California may be revived years later by filing security and the New York proceedings brought to an end by injunction in the San Francisco limitation proceedings.

The circumstances of the present case show the enormity of petitioners' argument. Libel by the cargo owners (respondents here) against the petitioners was filed in the Southern District of New York on May 15, 1941 (R., p. 5). Answer to the libel was filed by the petitioners (R., p. 34) and a number of witnesses were examined by deposition at great length (R., p. 37). Without notice to or knowledge of the libellants in the suit mentioned the alleged petition for limitation now presented for consideration, was filed in the Southern District of New York on November 3, 1941. Although it is set out in the alleged petition that the value of the vessel was a large sum ("not in excess of $359,000") and the pending freight is set out as $298,698.20 (R., p. 9), no security (except for costs) was filed or offered.

Because, in December 1942, a diligent clerk in the office of proctors for the present respondents noted an entry of this petition on the Southern District of New York calendar of cases to be considered for dismissal because of non-prosecution, and his interest in ascertaining if this proceeding had any relation to the suit he knew was pending against the petitioners, present respondents learned, for the first time, of the existence of the alleged petition. It seems apparent that the petitioners proposed to permit the alleged petition to remain dormant unless the outcome of the active suit should make revival worth while.

Not only was no security filed or offered with the alleged petition for limitation within the six months period—it never has been filed or offered at any time.

If this Court has any doubt of the law as laid down by the District Court and the Circuit Court of Appeals in this case, respondents join with the petitioners in asking that the petition be granted and that all doubts be removed. Respondents submit, however, that the facts and the applicable law reviewed in the opinion of the Circuit Court of Appeals, show a case singularly free from doubt.

The opinion of the Circuit Court of Appeals sets out respondents' position so clearly that we see no reason to add anything further.

Respectfully submitted,

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